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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JOHN E. STOUFFER, Cross-complainant and Appellant, v. EMILY STOUFFER, Cross-defendant and Respondent.	G041279 (Super. Ct. No. 07CC07509) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Mary Fingal Schulte, Judge. Affirmed.

Scott Sayre and David Brand for Cross-complainant and Appellant.

Timothy J. Hanly for Cross-defendant and Respondent.

* * *

Cross-complainant John E. Stouffer (son) appeals from a judgment for cross-defendant Emily Stouffer (mother) on his trespass cause of action. Son contends insufficient evidence supports the jury's special verdict finding that mother did not enter his house. But the special verdict form, properly construed, shows the jury found mother co-owned the house. Substantial evidence supports this finding. Thus, the jury reasonably found mother did not enter "son's" house. We affirm.

FACTS

Mother sued son for breach of contract, intentional and negligent misrepresentation, financial elder abuse, and conversion. At trial, she testified son promised she could live in his house in Orange and "share the house fifty-fifty" if she paid off the mortgage, which was approximately $200,000. Mother sold her own house, paid off son's mortgage, and moved into his Orange house in 2004. She paid to decorate the house, and bought a leather couch. Mother was diagnosed with breast cancer in May 2006, had a lumpectomy, and underwent chemotherapy from June to October 2006. After she told son of her diagnosis, he urged her to move out, and took her to look at other houses. Son gave back the $200,000 to mother and served her with a 30-day notice to quit in May 2007. The sheriff evicted her in July 2007.

Son filed a cross-complaint for trespass and intentional interference with prospective economic advantage. At trial, he testified he agreed to let mother live in the Orange house if she would loan him $200,000, pay half of the house's monthly expenses, and provide child care. Mother gave him the money, but reneged on her other promises. Mother refused to vacate the house after she had completed her chemotherapy, delaying the sale of the house during a falling real estate market. Son repaid the loan, evicted mother, and sold the house.

On mother's complaint, the jury returned a special verdict using a form her counsel prepared. The jury found son breached a contract and made an intentional misrepresentation. The jury also found son did not engage in financial elder abuse, make a negligent misrepresentation, or convert the couch. It awarded $100,000 to mother in compensatory damages and $0 in punitive damages.

On son's cross-complaint, the jury returned a special verdict using a form his counsel prepared. On his trespass cause of action, it found: "Did John Stouffer own the property? [¶] YES." "2. Did Emily Stouffer intentionally or negligently enter John Stouffer's property? [¶] NO." Per the form's instructions, the jury did not answer the next question — "3. Did Emily Stouffer exceed John Stouffer's permission?" — or determine whether he had suffered damages. On the interference cause of action, the jury found mother intended to disrupt son's economic relationship with a real estate agent, but did not engage in any wrongful conduct. The court entered judgment accordingly.

DISCUSSION

On appeal, son does not challenge judgment for mother on her breach of contract and intentional misrepresentation causes of action, or on his interference cause of action. Son limits his attack to mother's judgment on his trespass cause of action.

Son contends the trespass judgment must be reversed because the jury insupportably answered "NO" to the special-verdict question, "Did Emily Stouffer intentionally or negligently enter John Stouffer's property?" He notes the undisputed evidence showed mother lived in the Orange house. He concludes the jury should have answered the question "Yes" and continued to determine whether mother damaged him by refusing to move out earlier.

At first glance, son seems to have a point. Mother testified she moved into the house, so she must have entered it. But the analysis does not end here. The parties'

special verdict form did not ask the jury to determine whether mother entered "the house." It asked whether mother "enter[ed] John Stouffer's property."

Mother contends the entry question requires construction given the parties' claims at trial. She claimed her contract with son made her a "co-owner" of the house. Her counsel argued at closing, "So basically on the trespass claim, you've got a plaintiff [i.e., mother] that has a right to be there [but] who does not have the funds to leave, and yet she's being accused of lingering, and therefore, she has to pay [son's] damages. That doesn't make any sense." Mother concludes the entry question implicitly asked about more than mere entry. She suggests it also led the jury to determine whether the house was solely "John Stouffer's property" or — as she asserted — whether mother had a contractual right to the house. The jury may have answered the entry question "NO," mother suggests, because it found the house was not solely "John Stouffer's property."

We must construe the special verdict, whose "correctness is analyzed as a matter of law and therefore subject to de novo review." (*Zagami, Inc. v. James A. Crone, Inc.* (2008) 160 Cal.App.4th 1083, 1092 (*Zagami*).) "'A verdict should be interpreted so as to uphold it and to give it the effect intended by the jury, as well as one consistent with the law and the evidence.'" (*All-West Design, Inc. v. Boozer* (1986) 183 Cal.App.3d 1212, 1223.) "[R]eversal is required" only if the verdict is "hopelessly ambiguous." (*Woodcock v. Fontana Scaffolding & Equip. Co*. (1968) 69 Cal.2d 452, 457.) To avoid hopeless ambiguity, the court may "'interpret the verdict from its language considered in connection with the pleadings, evidence and instructions.'" (*Id.* at p. 456.)

Taken as a whole and in light of the parties' claims, the special verdict shows the jury found mother entered a house she co-owned, not "John Stouffer's property." It found for mother on her contract and intentional misrepresentation causes of action, and son does not contest those findings on appeal. The only reasonable conclusion given the claims at trial is that the jury believed son promised mother she

would "share the house fifty-fifty," and she thereby became a "co-owner" of the house.[1] If the jury believed this, as it must have to return a favorable judgment for mother on her complaint, the special verdict on the trespass cause of action is unproblematic. The jury answered "YES" to the first question, "Did John Stouffer own the property?" because he was one of the co-owners. It answered "NO" to the second question, "Did Emily Stouffer intentionally or negligently enter John Stouffer's property?" because she too was a co-owner — the house she entered was not solely "John Stouffer's property." Mother's testimony substantially supports the trespass findings, once they are properly construed.

Thus, the special verdict does not present hopeless ambiguity or require us "'to choose between inconsistent answers.'" (*Zagami, supra,* 160 Cal.App.4th at p. 1092.) This is not a case where a jury valued a skip loader at both $15,500 and $30,000 (*id*. at p. 1089) or valued land at both $445,000 and $850,000 per acre (*City of San Diego v. D.R. Horton San Diego Holding Co*., *Inc.* (2005) 126 Cal.App.4th 668, 683) or found a car was both negligently designed and had no design defect (*Lambert v. General Motors* (1998) 67 Cal.App.4th 1179, 1182). The jury here did not make any incompatible or unsupportable findings. It found son owned the house, but was never expressly asked whether son was *the sole* owner of the house. The jury's answer to the entry question, in light of its other findings and the parties' claims at trial, shows the jury consistently found (1) son had an ownership interest in the house, and (2) mother did not enter "John Stouffer's property" because she had an ownership interest in the house, too.

If son wanted a clearer special verdict form that would have expressly discouraged the jury to interpret the entry question as it apparently did, son bore the

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[1] Moreover, the jury's award of $100,000 in damages approximates one-half of the profit from the sale of the house. Mother testified without objection that son purchased the house for just over $400,000. Son testified he sold the house for $635,000. Similarly, the $200,000 son repaid mother plus the $100,000 jury award approximates one-half the house's $635,000 sales price. Contrary to son's claim, the damages award does not approximate the amount of legal interest that would accrue on a $200,000 loan between December 2004 and May 2007 (just over $48,000).

burden to propose one. (*Lynch v. Birdwell* (1955) 44 Cal.2d 839, 851 [applying "the settled rule" that parties waive verdict form error by not objecting below]; *Jensen v. BMW of North America, Inc*. (1995) 35 Cal.App.4th 112, 131 ["BMW waived any objection to the special verdict form by failing to object before the court discharged the jury"].) This conclusion springs from deeper waters than the technical doctrine of waiver. At the most basic level, "it is unfair to the trial judge and to the adverse party to take advantage of an error on appeal when it could easily have been corrected at the trial."[2] (9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 400, p. 459.)

DISPOSITION

The judgment is affirmed. Mother shall recover her costs on appeal.

IKOLA, J.

WE CONCUR:

O'LEARY, ACTING P. J.

ARONSON, J.

[2] We deny mother's motion to dismiss the appeal. She offered no evidence showing son willfully violated a court order to deposit funds with the court.